HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL No. 1132 OF 2006

Between:

The Government of Andhra Pradesh,
Rep. by its Secretary,
Irrigation and CAD (Projects) Dept.,
Hyderabad & others

..... Appellants

AND

Rachamallu Yugender Reddy & others

.....Respondents

:: J U D G M E N T::

Counsel for the appellants : Government Pleader for Irrigation & CAD

Dated: 01.11.2006

Per G.S.SINGHVI, CJ

This appeal is directed against order dated 10.08.2006 passed by the learned Single Judge in Writ Petition No. 6153 of 2006, whereby he declined the prayer of the writ petitioners (respondents herein) for restraining the non-petitioners (appellants herein) to interfere with their properties, but imposed costs of Rs.44,000/- payable at the rate of Rs.1,000/- to each of the petitioners.

The writ petitioners are residents of Pydipalem Village, Simhadripuram Mandal, Kadapa District. Due to construction of Pydipalem Reservoir, which is a part of Gandikota Lift Irrigation Project, their lands and properties are likely to be submerged. They filed writ petition under Article 226 of the Constitution of India for issue of a mandamus to the respondents to include their properties in the 'Requisition Book' and till then restrain them from initiating all further proceedings including issuance of notification under the Land Acquisition Act, 1894.

In the counter affidavit filed by Sri T.Venkata Swamy, Executive Engineer, Modernisation Division No.2, Pulivendula, it was averred that all the structures existing on 30.11.2005 were duly measured, photographed and videographed, and listed for acquisition. However, some persons raised additional structures with in intention to cheat the Government. According to Sri T.Venkata Swamy, the genuine oustees will be protected, but

in order to ensure that some persons are not able to take advantage of the policy of rehabilitation and re-settlement, notice was issued against raising of further structures or making new constructions.

The learned Single Judge referred to notice dated 1.12.2005 issued by Executive Engineer, Irrigation Department-II, Gandikota Lift Irrigation Project, Pydipalem Reservoir (respondent No.4) and observed that the same had promoted the petitioners to file the writ petition, but declined to entertain their prayer by observing that in the absence of initiation of acquisition proceedings, they cannot have any legal grievance. At the same time, he imposed costs by observing that the petitioners were compelled to seek intervention of the Court on account of the wholly unwarranted notice issued by respondent No.4. The relevant extracts of the order passed by the learned Single Judge are reproduced below:

> "The entire traumatic journey of the petitioners to this court is on account of the wholly vagrant and irrelevant notice issued by the 4th respondent. Despite considerable effort, the learned Government Pleader for Irrigation is unable to inform this Court, under what legal authority the 4th respondent issued the letter dated 01-12-2005. Under the provisions of the Act, the process of acquisition of land (by the power of eminent domain) commences with the issuance of a draft notification under Sec.4(1) of the Act. All earlier administrative exercise is an internal affair of the executive, which neither confers legitimacy on any State action to acquire private property nor determines the period from which the acquisition takes effect law. The 4th respondent's notice dated 01-12-2005 intimating that any new constructions or changes to the "existing structures

should not be done" is a notice that has no basis in law and constitutes an unlawful exercise of a non-existent authority by the 4th respondent who even in counter-affidavit filed by himself does not explain the legal basis for issuing such a notice. The learned Government Pleader for Irrigation states that the 4th respondent issued the notice *bonafide* to "save the government". The executive agency of the State is entitled to take measures to safeguard governmental interest only by lawful authority or under a legislative mandate. Vigilante action by executive authority is wholly unlawful and makes the holder of a public office open to disciplinary action and in the event of a grave conduct even for removal from public office. Sheer adventurism without any foundation in law is not a conduct desirable in public office. The 4th respondent is no exception to this established principle.

In the facts and circumstances of this case no draft notification under Sec.4(1) of the Act is seen to have been issued as on date. As and when acquisition is initiated, the respondents will be legally obligated to include all structures on the property proposed to be acquired as on the date of the notification under Sec.4(1) of the Act. This is the legislative mandate. The irrelevant notice of the 4th respondent cannot alter the course of the legislative mandate.

For the aforesaid reasons there is no legal grievance projected by the petitioners warranting adjudication in this writ petition. They have come on an apprehension created wholly on account of the 4th respondent's letter dated 01-12-2005. No relief in specie as prayed for could be granted.

As the petitioners were constrained to approach this Court (being illiterates and residents of villages), on account of the wholly irrelevant notice issued by the 4th respondent; and have suffered considerable expense and injury as a consequence thereof, this Court considers it

appropriate to impose costs in an amount of Rs.44,000/- (Rupees Forty four thousand only) payable @ RS.1000/- to each of the petitioners by the State within a period of four(4) weeks from day. It is open to the 1st respondent-State Government to identify the person holding the office of the 4th respondent (who had issued the wholly irrelevant and unlawful notice dated.01-12-2005) and to recover it from him in accordance with and after the due process of law."

Learned Government Pleader for Irrigation submitted that notice dated 01.12.2005 was issued by appellant No.4 to forestall further construction on the lands which are likely to be submerged in Pydipalem Reservoir of Gandikota Lift Irrigation Scheme and argued that the learned Single Judge gravely erred by imposing costs on the State without taking into consideration the fact that this was done with a bona fide intention to protect the public revenue. He further submitted that in the past whenever any property was sought to be acquired for development projects, people used to raise construction with a view to enhance the value of their property for the purpose of claiming higher compensation and for seeking benefit of benevolent policies framed by the Government and this was the reason why notice dated 01.12.2005 was issued.

In the context of the last-mentioned submission, we asked the learned Government Pleader to show any document or material from which it can be inferred that the writ petitioners (respondents herein) or anybody else had, after having come to know of the proposed acquisition of land for Pydipalem Reservoir, made any construction with a view to enhance the value of the

land or seek benefit of the policy of rehabilitation framed by the Government, but he could not draw our attention to any such document or material. The affidavit of Shri T. Venkata Swamy, Executive Engineer, Modernisation Division No.2, Pulivendula, Kadapa District is also conspicuously silent on this aspect. Therefore, the oral statement made by the learned Government Pleader for Irrigation that notice dated 01.12.2005 was issued to prevent mass-scale illegal construction by the villagers, which would have naturally enhanced the cost of the property sought to be acquired, cannot be entertained.

As a sequel to the above, we express our complete agreement with the opinion of the learned Single Judge that the writ petitioners (respondents herein) who constitute poorest among the poor in the society have been compelled to part with their hard-earned money for a wasteful litigation and, therefore, they are entitled to be compensated by award of costs.

For the reasons stated above, the appeal is dismissed.

As a sequel to dismissal of the main appeal, W.A.M.P.No.2372 of 2006 filed by the appellants for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

01.11.2006

ksld